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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,928	06/23/2003	James Edward Nault	1	1862

26630 7590 05/03/2006

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EXAMINER

DONNELLY, JEROME W

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/602,928	NAULT ET AL.	
	Examiner	Art Unit	
	Jerome W. Donnelly	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

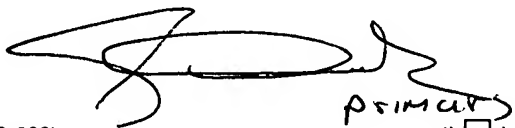
- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


PRIMARY

- References Cited (PTO-892)
- Afterperson's Patent Drawing Review (PTO-948)
- Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Mail Date ____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Office

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen 6648804.

Chen discloses a device comprising an exercise bar assembly comprising: elements (20, 60, 62, 40, 50, 80, 70, 72 and 90) and an elastic cord assembly (10). The exercise bar assembly comprising an elongated body, an opposing pair of cord tunnels (21), the elastic cord comprising a stretchable exercise cord and a means (30) of impingement.

Claims 2, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Wedge Jr.

Chen discloses the device of claim 2 substantially as claimed absent the teaching of the device comprising a bar separation assembly comprising: a release button and a snap-fit means connection.

Wedge Jr. discloses a separation assembly comprising a release button (20) and snap-fit means as claimed (see Wedge Jr. figs. 2 and 3).

Given the above teachings the examiner notes that it would have been obvious to one of ordinary skill in the art to provide as a separation means a release button and snap-fit separation as shown by Wedge Jr., as alternate known separation assembly known in the art of sectional bar attachment means.

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In regard to claim 5, the examiner notes that grasshopper leg springs and separation spring seats are notorious well known in the art of button spring clip used in conjunction with apertures for the joining of telescopic members.

In regard to claim 6 note elements 18 and 20 of Wedge Jr. The examiner further notes that the term "integral" is so broad to as read on the elements 18 and 20 of Wedge Jr.

Claims 3, 8-11, 13 and 20 rejected under 35 U.S.C. 102(b) as being anticipated by Chang.

Chang discloses a device comprising a bar (11) and elastic cords 6 Chang also discloses his bar assembly comprising cord tunnels 12 and impingement means 61. Chang further includes slots communicating with said cord tunnels.

In regard to claim 8 as broadly claimed element (13) of fig. 4 represents a recess.

In regard to claim 9 the applicant is reminded that the second tunnel opening being claimed is of a size (unknown) to accommodate a hand grip connection block. The applicant has not claimed the connection block or any portion thereof. The applicant is only claiming that the bar have at least two sites.

In regard to claim 11, the claim is so broad so as to read on the projections which form the tunnel openings (12) of Chang.

Chen discloses the limitation of claim (10) fig. 1 element 12.

The references of a handgrip in claims 9 and 13 are considered as limitations directed to functional language absent positively claimed structure of a handle and are not being examined as part of the claims.

The device of claim 20 is rejected for the same reason as set forth in the rejection of claim 1, 3 and 10 above.

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6 and 8-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6979286. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are fully disclosed in the patented claims of patent 6979286 as being obvious although not identically disclosed.

Claims 1-6 and 8-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6988978. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are fully disclosed in the patented claims of pat. 6988978 as being obvious, although not identically disclosed.

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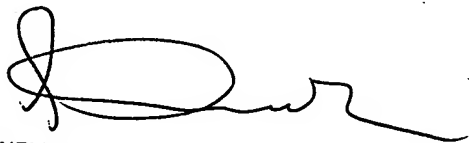
Claims 7, 12 and 14-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The applicant in addition must file a timely terminal disclaimer in compliance with 37 CFR 1,321(c) as detailed above.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the overall device of Kropp.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly



**JEROME DONNELLY
PRIMARY EXAMINER**